IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2286 of 1981

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

IDEAL FOAMS PVT LTD

Versus

UNION OF INDIA

---

Appearance:
Shri Trivedi for Shri KS NANAVATI for Petitioner
Shri MUKESH R SHAH for Respondent No. 1-4

---

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 18/09/2001

ORAL JUDGEMENT (Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

By this petition under Article 226 of the

Constitution of India, prayers are made, inter alia, to direct the respondents representing Central Excise Department of the Union of India to refund the duty of excise collected so far from the petitioner on the value of the packing material in which the manufactured goods of the petitioner were packed in and cleared from the factory. By order dated 12.1.1983, Division Bench of this Court dismissed the petition stating that,

"The point raised in this petition is covered by a decision rendered by a Full bench of this Court in Special Civil Application No.502 of 1980 and allied maters on October 26, 1982. The question is as to whether the cost of packing material is deductible from the value of the goods manufactured by the petitioner company as determined on the basis of the wholesale price fetched at the factory gate or the price at which the goods can be reasonably expected to be sold in wholesale at the factory gate. For the reasons specified in the judgment rendered by the Full Bench the petition must fail. The petitioner has claimed refund on the ground that the aforesaid cost was deductible from the value determined in accordance with the formula referred to hereinabove. The petition, therefore, fails and is rejected. There will be no order regarding costs.

.. .. .."

2. The petitioner then approached the Supreme Court in Civil Appeal No.3036 of 1983. The Supreme Court by order passed on 22.7.1997 remanded the matter to the High Court for a fresh decision for the reasons contained in its order, which reads as under:

"The appeal above mentioned being called on for hearing before this Court on the 22nd day of July 1997; UPON perusing the record and hearing counsel for the parties herein, THIS COURT DOTH in disposing of the appeal ORDER:

1. THAT the judgement and order dated 12th/ 13th January 1983 of the High Court of Gujarat at Ahmedabad in Special Civil Application No.2286 of 1981 be and is hereby set aside and the matter be and is hereby remitted to the aforesaid High Court with the direction that the said High Court do restore to its file Special Civil Application No.2286 of 1981 and do dispose of the same afresh

in accordance with law in the light of the decisions of this Court particularly those in Mafatlal Industries Ltd. v. Union of India reported in 1997 (89) ELT 247 (SC) and Govt. of India v. Madras Rubber Factory Ltd., reported in 1995 (77) ELT 433 (SC);

2. THAT there shall be no costs of this appeal in this Court;

AND THIS COURT DOTH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon'ble Jagdish Sharan Verma, Chief Justice of India, at the Supreme Court, New Delhi, dated this the 22nd day of July 1997."

3. We have heard learned counsel Shri Trivedi and Shri M.R. Shah for the respondent Department. Learned counsel appearing for the department brought to our notice the decisions in the case of Mafatlal Industries Ltd. and others v. Union of India and others, reported in (1997) 5 SCC 536 and in the case of Rajkot Fine Chemicals (P) Ltd. v. Union of India and others, reported in (1997) 10 SCC 662. In the latter decision of the Supreme Court the former decision in Mafatlal Industries Ltd. has been relied upon. In the case of Rajkot Fine Chemicals (P) Ltd. it has been held that the appropriate course in a case where excise duty has already been paid is for the party to approach with a refund application under sec.11B of the Central Excise and Salt Act. 1944. Learned counsel appearing for the petitioner has brought to our notice a letter dated 29.9.1980, Annexure 'A' which has been addressed to the Superintendent, Central Excise, Vadodara stating therein that the price list submitted by the petitioner be approved and he would be paying excise duty under protest. Learned counsel submits that as the excise duty was paid under protest even if an application for refund under section 11B of the Central Excise Act is made, the respondents may not set a bar of limitation. So far as bar of limitation is concerned in our view, the matter will have to be decided by the appropriate authority in light of the provisions of the Act and case law on the subject. We rely on the decisions of the Supreme Court in the case of Mafatlal Industries Ltd. and others (supra) and Rajkot Fine Chemicals (P) Ltd. (supra).

4. We dispose of this petition by permitting the petitioner to approach appropriate Central Excise

authorities under section 11B of the Central Excise Act. Since the matter is old one, let necessary approach be made within the period of sixty days from the date of this order.

5. The petition is disposed of accordingly. Rule is discharged. Interim relief is vacated. No order as to costs.

(D.M. Dharmadhikari, C.J.)

(Ravi R. Tripathi, J.)

karim